



THE CITY OF SAN DIEGO

REPORT TO THE PLANNING COMMISSION

DATE ISSUED: May 13, 2010 **REPORT NO. PC-10-044**

ATTENTION: Planning Commission, Agenda of May 20, 2010

SUBJECT: MONKEY TIME - PROJECT NO. 208460

**OWNER/
APPLICANT:** Todd Lesser, Monkey Time Inc., Owner
Brian Longmore, Permit Solutions, Applicant

SUMMARY

Issue(s): Should the Planning Commission make the determination that the Monkey Time business falls within the "Child Care Center" use subcategory of the Land Development Code, and is therefore an allowed limited use within the IP-2-1 zone?

Staff Recommendation: Do not make a determination that the Monkey Time business falls within the "Child Care Center" use subcategory, and confirm the City staff determination that the Monkey Time business is not a permitted use within the IP-2-1 zone.

Environmental Review: This activity is not a "project" and is therefore not subject to CEQA pursuant to State CEQA Guidelines Section 15060(c)(3).

Fiscal Impact Statement: The costs associated with this request are funded by the applicant.

Code Enforcement Impact: On March 24, 2010, the Code Enforcement Unit of the San Diego City Attorney's Office filed a three count criminal complaint against Defendant Todd Lesser, owner of Monkey Time Inc., which alleges three misdemeanor violations of the San Diego Municipal Code (SDMC) being maintained at Defendant's business premises located at 15932 Bernardo Center Drive. Count 1, (SDMC Sec. 131.0620(a)) and Count 2, (SDMC Sec. 131.0622) allege that Defendant maintains and uses his business premises to operate a children's gym, which is a use not permitted in the respective zone where the business premises is located, in violation of the SDMC. Count 3, (SDMC Sec. 129.0113(a)) alleges that Defendant operates an Assembly Group A occupancy use (i.e., a children's gym) in a Business Group B occupancy approved

structure on his business premises, without a valid certificate of occupancy approving this use, in violation of the SDMC.

The Defendant's arraignment is scheduled for May 20, 2010 in downtown Superior Court. On that date, the court will give a formal reading of the City's complaint and Defendant will enter a formal plea to the court. A future readiness conference will be scheduled by the court.

Housing Impact Statement: The interpretation of an appropriate use category and subcategory would not affect provision of housing units.

BACKGROUND

The Rancho Bernardo My Gym (My Gym) business is located at 15932 Bernardo Center Drive (Attachment 1) in an existing two-story building in the IP-2-1 zone of the Rancho Bernardo Community Plan (RBCP) area. The RBCP designates this site as industrial (Attachment 2) and consistent with the designation the of the site, was originally developed as part of a 9.9-acre industrial park development for seven buildings with 164,000 square feet of building area and a minimum of 475 off street parking spaces through the approval of Planned Industrial Development (PID) Permit No. 89-0511 (Attachment 4).

In November 2006, Monkey Time L.L.C. submitted a building application to the City of San Diego and was approved for interior tenant improvements to the existing industrial space to include demolition and new interior wall partitions, ceiling work, mechanical, electrical, and plumbing to create a new equipment showroom. Subsequently, on June 28, 2007, Monkey Time L.L.C. submitted an application for additional tenant improvements to create a children's gym facility. This application was denied because the proposed use is not consistent with conditions of the PID Permit No. 89-0511 and not allowed in the IP-2-1 zone.

On October 9, 2007, the City issued a Notice of Violation (NOV) to My Gym for conducting a business characterized as *Personal Services* use (LDC sec. 131.0112(6)(H)) and not an allowed in the IP-2-1 zone. The violation was not corrected and on January 16, 2008, the City issued a Civil Penalty Notice and Order (CPNO) to My Gym for the same violations. However, on July 7, 2009, after appeal hearings with the City's Administrative Hearing Officer, the Administrative Hearing Officer issued a Civil Penalties Administrative Enforcement Order to dismiss the NOV and CPNO and any civil penalties and administrative costs sought to be assessed.

On April 8, 2010, Monkey Time L.L.C. submitted an application to the City of San Diego requesting the Planning Commission determine if their existing business operation use fits into the category of a Child Care Center and if the business is allowed by definition.

DISCUSSION

The Monkey Time L.L.C. is challenging City staff's determination that their business is not a permitted use within the IP-2-1 zone. In this case, the applicant is requesting an interpretation by the Planning Commission to evaluate whether the applicant's commercial development is a permitted use within an industrial park zone. The applicant is specifically requesting that the Planning Commission recommend classification of their business as a Child Care Center so that the use may be permitted in the IP-2-1 zone.

The Land Development Code Chapter 13, Article 1, Division 1, General Rules for Base Zones (Attachment 5), provides direction on how to classify, regulate and address relationships between land uses in various development proposals. Base zones are applied to property within the City to help ensure that land uses are properly located. A land use is classified based on facility needs and operational characteristics of the use including type of use, intensity of use, and development characteristics of the use. The facilities operational characteristics are compared to descriptions for various use categories in LDC sec. 131.0112. In accordance with LDC sec. 131.0110(a), if a particular use could meet the description of more than one use subcategory, the subcategory with the most direct relationship to the specific use shall apply. City staff analyzed the operational requirements and characteristics of the My Gym business and the categories and subcategories most closely resembling this business activity are:

- *Personal Services*- Uses that provide a variety of services associated with personal grooming and the maintenance of health and well being (LDC sec. 131.0112(a)(6)(H)).
- *Assembly and Entertainment*- Uses that provide gathering places for large numbers of people for recreation, physical fitness, entertainment, or other assembly (LDC sec. 131.0112(a)(6)(I)).
- *Instructional Studios*- Establishments in which skills including dance, art, and martial arts are taught to individuals or groups. Instructional studios do not include educational facilities (LDC sec. 141.0612)[Attachment 6].

The My Gym business is a children's gym that offers a variety of fitness oriented classes for children, and hosts events such as private birthday parties, <http://www.mygymsandiego.com/>. Most activities involve children under the supervision of their own parents in a group setting with My Gym staff who help to facilitate group activities and engage the children in those activities. Historically, gyms and fitness centers, including children's gyms, have been classified within the *Assembly and Entertainment* use category. *Personal Services* and *Instructional Studios* are similar commercial service use categories that relate to services offered by the My Gym business; however, none of these commercial service uses are permitted as a primary use within the IP-2-1 zone.

Monkey Time L.L.C. has suggested that Child Care Centers, a separately regulated commercial services use category (LDC sec. 141.0606(c))[Attachment 7], would apply because that use category is permitted as a limited use in the IP-2-1 zone (Attachment 8). However, a child care

center is “any child care facility, other than a small or large family day care home, that is licensed by the State of California to provide child care: child care centers may be infant centers, preschools, or school-age, extended day care facilities” (LDC sec. 141.0606(a)(2)). The term child care facility is also defined within the Land Development Code as “a facility that provides nonmedical care for children less than 18 years of age, on less than a 24-hour basis including small family day care homes, large family day care homes, and child care centers” (LDC sec. 113.0103).

The My Gym business is not a state licensed child care facility. By nature of the activities that they provide, which involve children being supervised by their own guardians, the My Gym facility is actually exempt from obtaining any type of state licensing for child care. The primary function of the My Gym business is to provide entertainment and activities for children to experience together with their guardians. The primary function is not one where parents delegate care and supervision of children to My Gym staff. For example, in the infant/toddler classes parental participation is required. Parents change their own child’s diaper and feed their own children as needed during the class. The facility provides diaper changing facilities and feeding areas similar to other commercial service/entertainment establishments that cater to families with young children. The actual supervision, diapering, and feeding care is done by the actual parents/guardians, which is contrary to the type of care that is offered in a state licensed child care center. The classes for older children are operated similar to businesses in the instructional studio category where skills including art, dance, or martial arts are taught to individuals or groups.

The Rancho Bernardo My Gym is a franchise store that is part of a larger national corporation, <http://www.my-gym.com/>. My Gym is self proclaimed to be “the world wide leader in children’s fitness”. They offer gym classes and activities that develop coordination, agility, flexibility, motor skills, exercise and play. They offer classes where parents are required to participate (children three months to three and a half years) as well as independent classes (children aged three and a half years to thirteen years) where parents/guardians typically stay on the premises with their child until the class is over.

The use category determination is significant for a number of reasons. The main reason is to determine whether or not the use is permitted in the applicable zone. As indicated above, *Assembly and Entertainment*, *Personal Services*, and *Instructional Studios* are not permitted in the IP-2-1 zone; however, Child Care Centers are currently permitted as a limited use. Child care was originally permitted within this zone in consideration of employers within the industrial park development’s to help reduce trips by allowing Child Care Centers in close proximity to help supervise and care for the children of working parents during the work day. However, during the recent General Plan adoption hearings, stakeholders in the City’s industrial park area expressed their concern that commercial service uses were instead displacing desirable base sector industrial tenants. As a result, the City adopted a policy to protect prime industrial lands from the encroachment of commercial service uses and added to the General Plan Implementation Action Plan a task to amend the Land Development Code to clarify that sensitive receptors such as child care facilities are not permitted in prime industrial lands.

The determination of required parking is also reliant on the applicable use category. For example,

a parking requirement of five spaces per 1,000 square feet would be typical for commercial services or health clubs, while thirty spaces would be required for other public assembly and entertainment uses where there is no fixed seating. Child care facilities are only required to provide one parking space for each staff person. By comparison within the context of the City's Land Development Code, a true child care facility is expected to have fewer trips and require fewer parking spaces than other commercial service land uses that provide entertainment and extracurricular activities.

Community Plan Analysis:

The Rancho Bernardo Community Plan (RBCP) designates the project site for Industrial use. My Gym's proposed use as a child care center would not be in conformance with the RBCP. The Industrial land use designation is intended to accommodate a mixture of research and development, manufacturing and ancillary industrial activities commensurate with modern electronics and advanced technologies. Policies of the Plan strongly support the preservation of an adequate supply of industrial land in order to encourage the establishment of labor intensive industry to broaden the employment base in the community. The RBCP provides policy language to protect designated industrial areas from encroachment by non-industrial uses. The Plan acknowledges that some encroachment has already occurred and states that no further erosion of the industrially-designated areas should be permitted.

While the RBCP does discuss consideration of establishments which provide support services to major tenants of the industrial park, it states that such uses should be minimized in order to ensure adequate acreage for purely industrial park development. It is the objective of the Plan to protect the designated industrial areas from encroachment by non-industrial uses by prohibiting residential uses and non-ancillary uses in industrially designated areas. An ancillary use is a subsidiary or secondary use or operation connected to the main use of a building or piece of land.

The City's General Plan also provides numerous policies regarding Industrial land. The proposed project is located in an area identified as Prime Industrial Land, as shown on Figure EP-1 in the General Plan (Attachment 9). Policy EP-A.13 states that in areas identified as Prime Industrial Land, do not permit discretionary use permits for public assembly or sensitive receptor land uses (Attachment 10). According to the General Plan Glossary, land uses considered to be sensitive receptors include residential, schools, child care centers, acute care hospitals, and long-term health care facilities. Sensitive receptors are determined based upon special factors which may include the age of the users or occupants, the frequency and duration of the use or occupancy, continued exposure to hazardous substances as defined by federal and state regulations, and the user's ability to evacuate a specific site in the event of a hazardous incident.

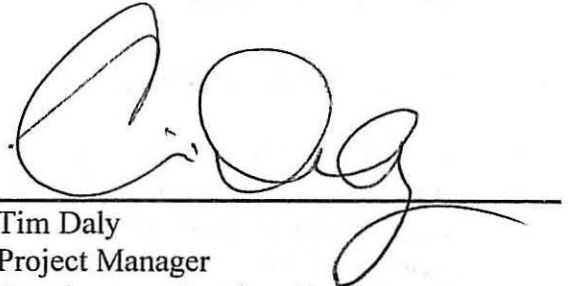
Conclusion:

City staff has determined that the primary use being conducted by Monkey Time L.L.C.'s, Rancho Bernardo My Gym is not a child care center pursuant to the Land Development Code, and is therefore not a permitted use within the IP-2-1 zone.

Respectfully submitted,



Mike Westlake
Program Manager
Development Services Department



Tim Daly
Project Manager
Development Services Department

BROUGHTON/TPD

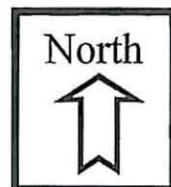
Attachments:

1. Project Location Map
2. Aerial Photograph
3. Community Plan Land Use Map
4. Planned Industrial Development (PID) Permit No. 89-0511
5. Land Development Code Chapter 13, Article 1, Division 1, General Rules for Base Zones
6. LDC sec. 141.0612, Instructional Studios
7. LDC sec. 141.0606, Child Care Facilities
8. Land Development Code Chapter 13, Article 1, Division 6, Industrial Base Zones
9. General Plan Figure EP-1, Rancho Bernardo Industrial and Prime Industrial Land
10. General Plan Economic Prosperity Element



Project Location

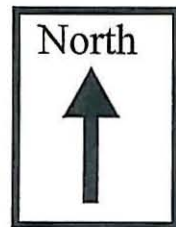
MONKEY TIME, Project No. 208460
19532 Bernardo Center Drive

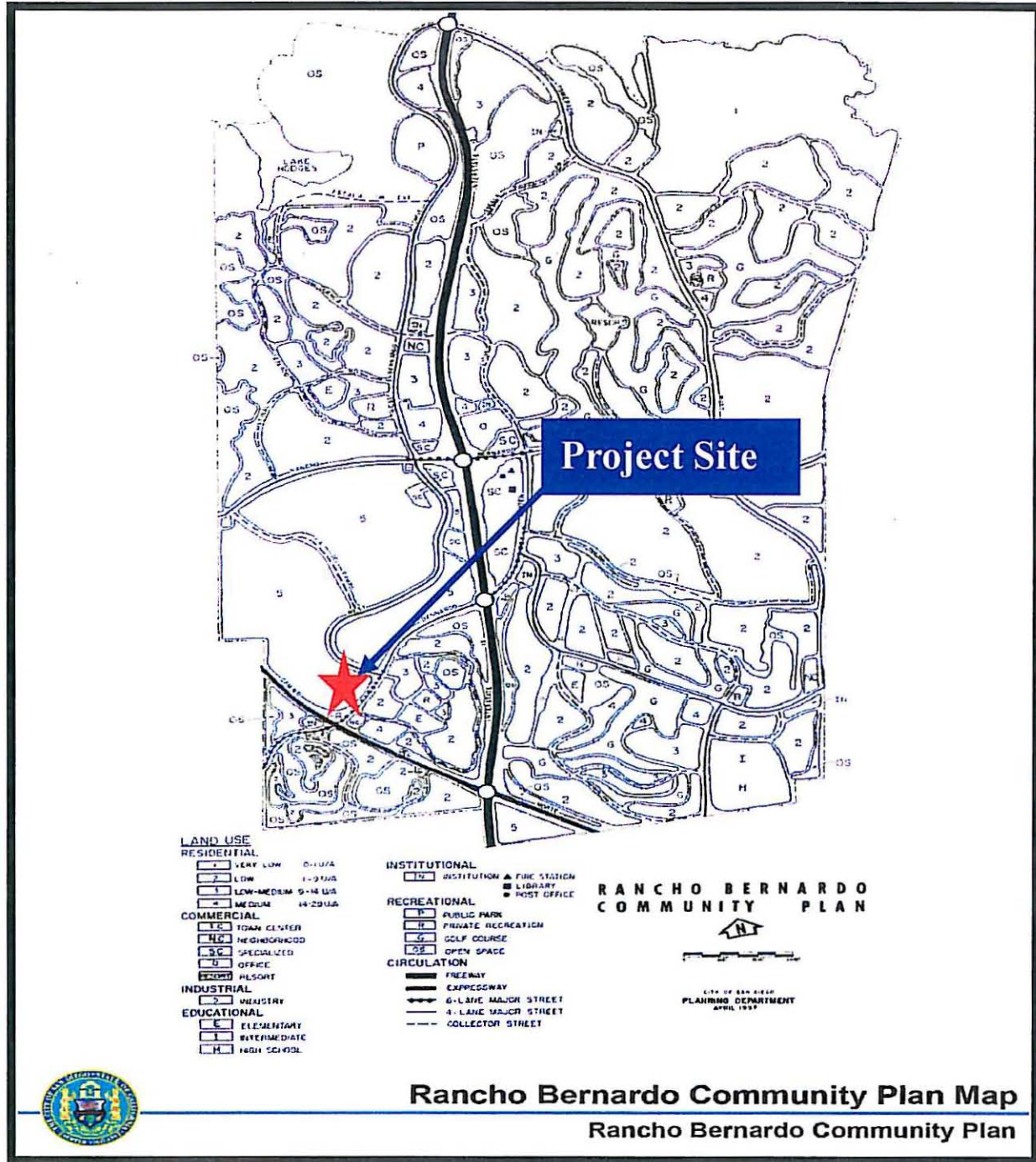




Aerial Photo

MONKEY TIME, Project No. 208460
19532 Bernardo Center Drive

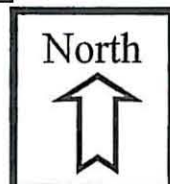




Rancho Bernardo Community Land Use Map



MONKEY TIME, Project No. 208460
19532 Bernardo Center Drive



Requesting Requester by
and Mail to:
City of San Diego
Planning Department
202 C Street, M.S. 4A
San Diego, CA 92101-3864

NOTE: COUNTY RECORDER, PLEASE RECORD AS
RESTRICTION ON USE OR DEVELOPMENT OF
REAL PROPERTY AFFECTING THE TITLE TO ATTACHMENT 4
OR POSSESSION THEREOF.

PLANNED INDUSTRIAL DEVELOPMENT PERMIT NO. 89-0511
PLANNING DIRECTOR

This Planned Industrial Development Permit is granted by the Planning Director of the City of San Diego to WILMA PACIFIC, INC, a Georgia corporation, Permittee, KAISER DEVELOPMENT COMPANY, a California corporation, Owner, Pursuant to Section 101.0920 of the Municipal Code of the City of San Diego.

1. Permission is hereby granted to Owner/Permittee to develop a 164,000-square-foot building area for industrial use in seven buildings on 9.9 acres Planned Industrial Development located at the southwestern intersection of Bernardo Center Drive and West Bernardo Drive, described as Lots 8, 9 and 10, Map No. 10264, in the MIP Zone.

2. The facility shall consist of the following:

- a. 164,000, seven (7) buildings;
- b. Landscaping;
- c. Off-street Parking; and
- d. Incidental accessory uses as may be determined incidental and approved by the Planning Director.

3. Prior to the issuance of any building permits, a final subdivision map shall be recorded on the subject property.

4. Not fewer than 475 off-street parking spaces shall be maintained on the property in the approximate location shown on Exhibit "A," dated August 28, 1989, on file in the office of the Planning Department. Parking spaces shall be consistent with Division 8 of the Zoning Regulations of the Municipal Code and shall be permanently maintained and not converted for any other use. Parking spaces and aisles shall conform to Planning Department standards. Parking areas shall be clearly marked at all times. Landscaping located in any parking area shall be permanently maintained and not converted for any other use.

5. No permit for the construction of any facility shall be granted nor shall any activity authorized by this permit be conducted on the premises until:

- a. The Permittee signs and returns the permit to the Planning Department;

The Planned Industrial Development Permit is recorded in the office of the County Recorder.

MAR 20 1991

RECEIVED

ORIGINAL

6. Before issuance of any building permits, complete grading and building plans shall be submitted to the Planning Director for approval. Plans shall be in substantial conformity to Exhibit "A," dated August 28, 1989, on file in the office of the Planning Department. No change, modifications or alterations shall be made unless appropriate applications or amendment of this permit shall have been granted.

7. Before issuance of any grading or building permits, a complete landscape plan, including a permanent irrigation system, shall be submitted to the Planning Director for approval. The Plans shall be in substantial conformity to Exhibit "A," dated August 28, 1989, on file in the office of the Planning Department. Approved planting shall be installed before issuance of any occupancy permit on any building. Such planting shall not be modified or altered unless this permit has been amended and is to be maintained in a disease, weed and litter free condition at all times.

8. All outdoor lighting shall be so shaded and adjusted that the light is directed to fall only on the same premises as light sources are located.

9. The effective date of this permit shall be the date of final action following all appeal dates and proceedings. The permit must be utilized within 36 months after the effective date. Failure to utilize the permit within 36 months will automatically void the permit unless an extension of time has been granted by the Planning Director, as set forth in Section 101.920, M, of the Municipal Code. Any such extension of time must meet all the Municipal Code requirements and applicable guidelines in effect at the time the extension is considered by the Planning Director.

10. Construction and operation of the approved use shall comply at all times with the regulations of this or any other governmental agencies.

11. After establishment of the project, the property shall not be used for any other purposes unless:

- a. Authorized by the Planning Director; or
- b. The proposed use meets every requirement of the zone existing for the property at the time of conversion; or
- c. The permit has been revoked by the City.

The property included within this Planned Industrial Development shall be used only for the purposes and under the terms and conditions set forth in this permit unless authorized by the Planning Director or the permit has been revoked by the City of San Diego.

ORIGINAL

12. This Planned Industrial Development permit may be cancelled or revoked if there is a material breach or default in any of the conditions of this permit. Cancellation or revocation may be instituted by the City of San Diego or Permittee.

13. This Planned Industrial Development Permit is a covenant running with the subject property and shall be binding upon the Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this permit and all referenced documents.

14. Permanent and/or temporary signs shall be approved by the Planning Director and shall be consistent with the criteria established by the sign plan, part of Exhibit "A," dated August 28, 1989. Unless otherwise provided specifically within this permit, all signs requested and proposed for this project shall conform to City-wide sign regulations and be administered by the Sign Code Administration Division of the Planning Department.

15. This Planned Industrial Development may be developed in phases. Each phase shall be constructed prior to the sale or lease to individual owners or tenants to ensure that all development is consistent with conditions and exhibits submitted to an approved by the Planning Director.

16. The use of texture or enhanced paving shall be permitted only with the approval of the City Engineer and Planning Director, and shall meet standards of these departments as to location, noise and friction values, and any other applicable criteria.

17. If any existing hardscape or landscape indicated on the approved plans is damaged or removed during demolition or construction, it shall be repaired and/or replaced in kind per the approved plans.

18. No construction or demolition is allowed without the approval of the Building Official.

19. In the event that any condition of this permit, on a legal challenge by the "Owner/Permittee" of this permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable or unreasonable, this permit shall be void.

APPROVED by the Planning Director of the City of San Diego on August 28, 1989.

ORIGINAL

AUTHENTICATED BY:

Theodore R. Shaw

THEODORE R. L. SHAW, ACTING SENIOR PLANNER
PLANNING DEPARTMENT

On this 26th day of September in the year 1989,
before me, CATHERINE L. MEYER, a Notary Public in and for said county
and state, personally appeared THEODORE R.L. SHAW, personally known
to me (~~er-proved-to-me-on-the-basis-of-satisfactory-evidence~~) to be
the person who executed this instrument as ACTING SENIOR PLANNER of
the City Planning Department, and acknowledged to me that the City of
San Diego executed it.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal, in
the County of San Diego, State of California, and the day and year
in this certificate first above written.

NAME CATHERINE L. MEYER

SIGNATURE

Catherine Meyer

LS

NOTARY STAMP



ORIGINAL

ACKNOWLEDGED:

The undersigned "Owner/Permittee" by execution hereof agrees to each and every condition of this permit and promises to perform each and every obligation of Permittee hereunder.

WILMA PACIFIC, INC., A GEORGIA CORPORATION, OWNER/PERMITTEE,

BY William A. Budge Vice President
William A. Budge

BY Loren W. Brucker
Loren W. Brucker - Asst. Secretary

State of California,) SS.
County of San Diego)

On this _____ day of _____, in the _____ year, before me _____, a Notary Public in and for said county and state, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as president (or secretary) or on behalf of the corporation therein named, and acknowledged to me that the corporation executed it.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal, in the County of San Diego, State of California, the day and year in this certificate first above written.

NAME _____
(typed or printed)

STATE OF CALIFORNIA)
COUNTY OF Orange) ss.

On October 3, 1989, before me, the undersigned, a Notary Public in and for said State, personally appeared William A. Budge and Loren W. Brucker, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons who executed the within instrument as Vice President and Asst. Secretary, on behalf of Wilma Pacific, Inc.

the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Signature Mary Shearing



(This area for official notarial seal)

ORIGINAL

(CORPORATION)
3002 (6/82) - (Corporation) First American Title Insurance Company

Chapter 13: Zones
(Added 12-9-1997 by O-18451 N.S.)

Article 1: Base Zones
(Added 12-9-1997 by O-18451 N.S.)

Division 1: General Rules for Base Zones
(Added 12-9-1997 by O-18451 N.S.)

§131.0101 Purpose of Base Zones

The purpose of this article is to establish base zones to help ensure that land uses within the City are properly located and that adequate space is provided for each type of *development* identified. Base zones are intended to regulate uses; to minimize the adverse impacts of these uses; to regulate the zone *density* and intensity; to regulate the size of buildings; and to classify, regulate, and address the relationships of uses of land and buildings.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§131.0102 Amendments to Base Zones

On the effective date of Ordinance O-18691, (January 1, 2000) all zones that were established in Municipal Code Chapter 10, Article 1, Division 4 shall be amended and replaced with the base zones established in Chapter 13, Article 1, Divisions 1 through 6.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§131.0103 Official Zoning Maps

- (a) Base zones are represented on the Official Zoning Maps to be prepared by the City. The Official Zoning Maps shall be identified as an exhibit accompanying the ordinance that the City Council approves for any zoning or rezoning action. The Official Zoning Maps are the authority for identifying the boundary of any application of a base zone.

- (b) Where uncertainty exists with respect to the boundaries of zones shown on the Official Zoning Maps the following rules shall apply:
- (1) Where a zone boundary follows a *lot* line, the *lot* line shall be the boundary.
 - (2) Where a zone boundary follows a public *street*, the centerline of the *street* shall be the boundary.
 - (3) Where any unzoned *public right-of-way* is officially vacated or abandoned, the zone boundary applied to *abutting property* shall be the centerline of the vacated or abandoned *public right-of-way*.
 - (4) Where a zone boundary divides a *lot* or parcel, the location of the boundary shall be determined by the scale contained on the Official Zoning Map.
 - (5) Where there is an obvious mistake that can be corrected by reference to documents on file or by reference to the legislative record, the City Manager may identify the zone boundary.

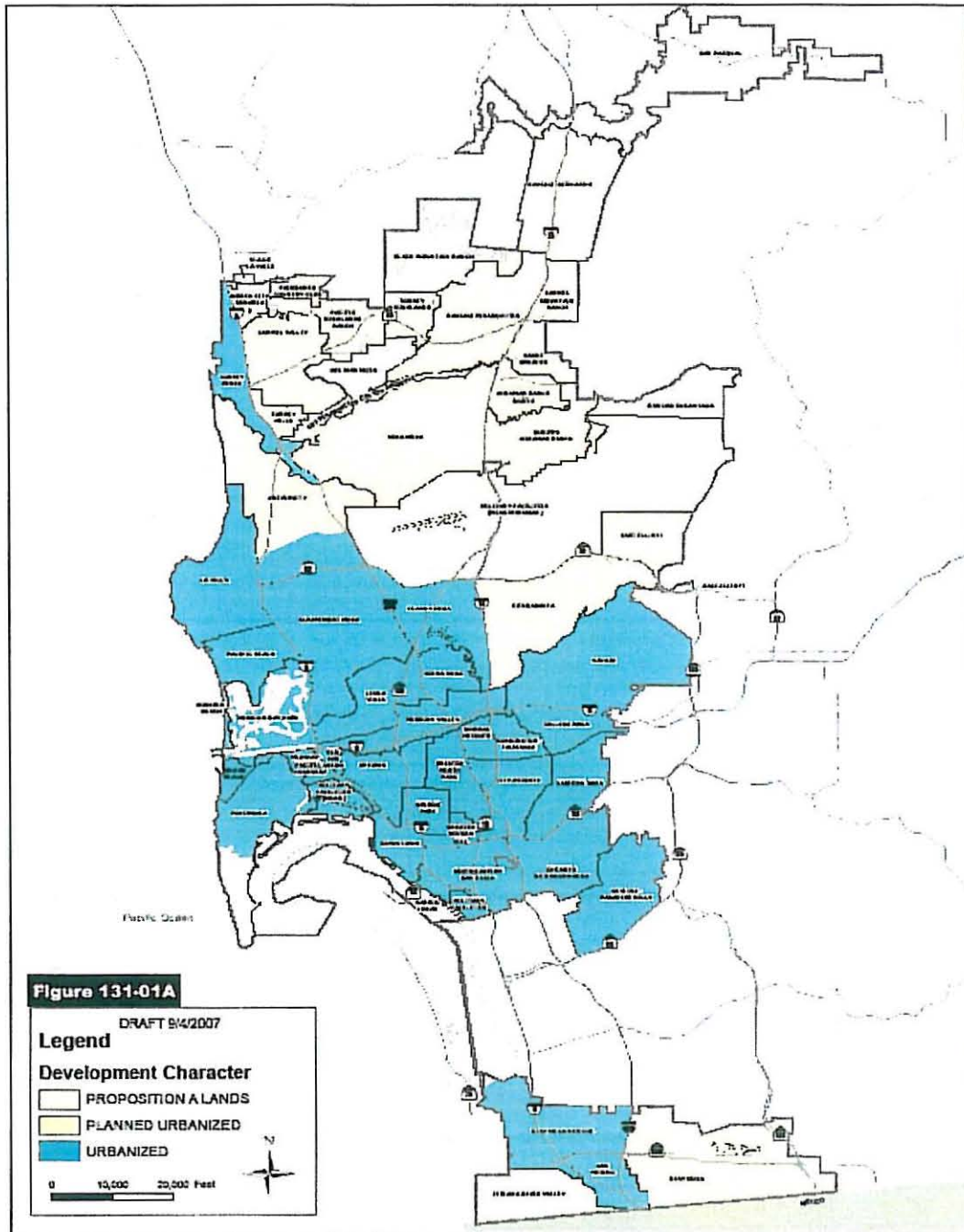
(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§131.0105 Development Character Areas

Development Character Areas are established to ensure that appropriate *development* regulations are applied to community plan areas based upon their age and geographic location and include *Proposition A Lands*, *Planned Urbanized Communities*, and *Urbanized Communities*. Development Character Area boundaries generally follow community plan area boundaries except in the case of University City, which falls into two Development Character Areas. Development Character Areas are represented on Figure 131-01A.

(Added 4-8-2008 by O-19734 N.S.; effective 5-8-2008.)

Figure 131-01A
Development Character Areas



(Added 4-8-2008 by O-19734 N.S.; effective 5-8-2008.)

§131.0110 Determination of Use Category and Subcategory

- (a) A use shall be identified as belonging to a use category and use subcategory based upon the descriptions in Section 131.0112 and the facility needs and operational characteristics of the use including type of use, intensity of use, and *development* characteristics of use. The Use Regulations Tables in the base zones shall be used to determine in which base zones the use is permitted. If a particular use could meet the description of more than one use subcategory, the subcategory with the most direct relationship to the specific use shall apply. The City Manager shall identify a particular uses' category and subcategory upon request of an *applicant* or a property owner.
- (b) If the *applicant* or property owner disputes the City Manager's determination, the City Manager may place the question of the appropriate use category and use subcategory for that particular use on the Planning Commission's agenda. The City Manager shall present the factors used in the determination and the position of the *applicant* or property owner. The Planning Commission shall recommend to the City Manager its interpretation of the appropriate use category or use subcategory for the particular use.
- (c) If an appropriate use category and use subcategory cannot be determined for a specific use by referring to the Use Regulations Tables, an amendment to the Use Regulations Table may be initiated in accordance with Chapter 12, Article 3, Division 1 (Zoning and Rezoning Procedures).

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§131.0111 Grouping of Use Categories

For the purpose of determining applicable development regulations, use categories shall be grouped according to the following:

- (a) Any use within the open space use category is considered an open space use or open space *development*.
- (b) Any use within the agricultural use category is considered an agricultural use or agricultural *development*.
- (c) Any use within the residential use category is considered a residential use or residential *development*.
- (d) Any use within the institutional, retail sales, commercial services, offices, and vehicle and vehicular equipment sales and services categories is considered a commercial use or commercial *development*.
- (e) Any use within the wholesale, distribution, storage, and industrial categories is considered an industrial use or industrial *development*.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§131.0112 Descriptions of Use Categories and Subcategories

- (a) The following are descriptions of each use category and subcategory found in the Use Regulations Tables of each base zone. These descriptions shall be used to classify specific uses into use subcategories for the purpose of determining applicable use regulations, in accordance with Section 131.0110. A description of separately regulated uses is located in Section 131.0112(b).

- (1) Open Space Use Category

This category includes uses that may occur on land that has been identified for public recreational uses or to be left in a generally natural state. The open space subcategories are:

- (A) Active Recreation — Public park facilities that require major land *development* for installation, require a high level of maintenance, and can accommodate large assemblages of people.

- (B) Natural Resources Preservation — Undeveloped land left in a natural state for specific use as visual open space or environmental mitigation.
- (C) Park Maintenance Facilities — Major *structures* or facilities used in conjunction with the maintenance of *public parks*.
- (D) Passive Recreation — Recreational facilities associated with pastimes that are incidental to natural open space. These facilities require minor land *development* for installation, require minimum maintenance, do not attract large assemblages of people, and have little impact on natural open space.

(2) Agriculture Use Category

This category includes uses that involve the raising and harvesting of crops, the raising of animals, and the processing of plant and animal by-products. The agriculture subcategories are:

- (A) Agricultural Processing — Uses related to the processing or preparation of crops, animals, or animal by-products grown or raised on the same *premises* for consumption or transportation to markets.
- (B) Aquaculture Facilities — Uses that grow plants and animals in a water medium, either indoors or outdoors.
- (C) Dairies — Uses related to the milking of livestock and processing milk for consumption or transportation to markets.
- (D) Horticulture Nurseries and Greenhouses — Uses that propagate and grow plants in containers or in the ground and the associated sales of those plants.
- (E) Raising and Harvesting of Crops — Uses that involve the planting, maintaining, and harvesting of crops for consumption or for commercial purposes.
- (F) Raising, Maintaining, and Keeping of Animals — Uses that involve the feeding, housing, and maintenance of animals for private or commercial purposes.

(3) Residential Use Category

This category includes uses that provide living accommodations for one or more persons. The residential subcategories are:

- (A) *Rooming houses*. Dwellings where rooms are rented, individually or separately, resulting in multiple, independent living units where tenants do not share common access or financial responsibility for use of the *dwelling unit* as a whole. Pursuant to Section 127.0102(d), all *previously conforming rooming houses* shall be unlawful three years from the effective date of Ordinance O-2008-61..
- (B) *Mobilehome Parks* — A *premises* with two or more mobilehomes used as dwelling units other than companion units or employee housing.
- (C) *Multiple Dwelling Units* — Dwelling units where more than one dwelling unit is located on a single *lot*.
- (D) *Single Dwelling Units* — Dwelling units where no more than one dwelling unit is located on a *lot*, usually detached, and occupied by a single household unit.

(4) Institutional Use Category

This category includes uses that provide unique services that are of benefit to society as a whole. All of the uses in this use category are separately regulated uses. See Section 131.0112(b).

(5) Retail Sales Use Category

This category includes uses involving the sale, lease or rental of new or used goods to the general public. The retail sales subcategories are:

- (A) *Building Supplies and Equipment* — Uses that provide goods to repair, maintain, or visually enhance a *structure* or *premises*.
- (B) *Consumer Goods, Furniture, Appliances, and Equipment* — Uses that provide goods, large and small, functional and decorative, for use, entertainment, comfort, or aesthetics.
- (C) *Food, Beverages, and Groceries* — Uses that provide food for consumption off of the *premises*.
- (D) *Pets and Pet Supplies* — Uses that provide household pets and pet supplies for sale; grooming services.

- (E) Sundries, Pharmaceuticals, and Convenience Sales — Uses that provide goods for personal grooming and for the day-to-day maintenance of personal health and well-being.
 - (F) Wearing Apparel and Accessories — Uses that provide goods to cover, protect, or visually enhance the human form.
- (6) Commercial Services Use Category
- This category includes uses that provide for consumer or business services, for the repair and maintenance of a wide variety of products, and for entertainment. The commercial services subcategories are:
- (A) Building Services — Uses that provide maintenance and repair services for all structural and mechanical elements of *structures*, as well as the exterior spaces of a *premises*.
 - (B) Business Support — Uses that provide personnel services, printing, copying, and photographic services, or communication services.
 - (C) Eating and Drinking Establishments — Uses that prepare or serve food or beverages for consumption on or off the *premises*.
 - (D) Financial Institutions — Uses related to the exchange, lending, borrowing, and safe-keeping of money.
 - (E) Funeral and Mortuary Services — Uses that provide services related to the death of a human.
 - (F) Maintenance and Repair — Uses that provide maintenance, cleaning and repair services for consumer goods.
 - (G) Off-Site Services — Uses that provide for deliveries of a wide variety of products and that provide services that are used at a location separate from the business providing the delivery or service.
 - (H) Personal Services — Uses that provide a variety of services associated with personal grooming and the maintenance of health and well-being.

- (I) Assembly and Entertainment — Uses that provide gathering places for large numbers of people for recreation, physical fitness, entertainment, or other assembly.
 - (J) Radio and Television Studios — Uses that provide for the production, recording, and broadcasting of radio and television shows and motion pictures.
 - (K) Visitor Accommodations — Uses that provide lodging, or a combination of lodging, food, and entertainment, primarily to visitors and tourists. (Outside the Coastal Overlay Zone, includes single room occupancy hotels.)
- (7) Office Use Category
- This category includes uses in an enclosed building that focus on business, government, professional, medical, or financial services. The offices subcategories are:
- (A) Business and Professional — Uses related to earning a livelihood through a commercial or mercantile endeavor or through the practice of a vocation requiring specialized training or education.
 - (B) Government — Uses related to the administration of the regulations of local, state, or federal government.
 - (C) Medical, Dental, and Health Practitioner — Uses related to diagnosis and treatment of human illness and physical malfunction that can be performed in an office setting. Medical and dental laboratories are included in this subcategory, unless otherwise indicated.
 - (D) Regional and Corporate Headquarters — Uses related to the administration of large or geographically widespread businesses that may be located separately from the main activity of those businesses.
- (8) Vehicle and Vehicular Equipment Sales and Services Use Category
- This category includes uses that provide for the sale, rental, maintenance, or repair of new or used vehicles and equipment. The Vehicle and vehicular equipment sales and services subcategories are:

- (A) Commercial Vehicle Repair and Maintenance — Uses that repair and maintain the mechanical components or the bodies of large trucks, mass transit vehicles, large construction or agricultural equipment, aircraft, or commercial boats.
- (B) Commercial Vehicle Sales and Rentals — Uses that provide for the sale or rental of large trucks, mass transit vehicles, large construction or agricultural equipment, aircraft, or commercial boats.
- (C) Personal Vehicle Repair and Maintenance — Uses that repair the mechanical components or the bodies of autos, small trucks or vans, motorcycles, motor homes, or recreational vehicles including recreational boats or that wash, clean, or otherwise protect the exterior and interior surfaces of these vehicles.
- (D) Personal Vehicle Sales and Rentals — Uses that provide for the sale or rental of new or used autos, small trucks or vans, motorcycles, motor homes, or recreational vehicles including recreational boats.
- (E) Vehicle Equipment and Supplies Sales and Rentals — Uses related to the sale, lease, or rental of new or used parts, tools, or supplies for the purpose of repairing or maintaining vehicles, including distribution of products from the same *premises* that sells, leases, or rents them.
- (9) Wholesale, Distribution, Storage Use Category
- This category includes uses that provide and distribute goods in large quantities, especially to retail sales establishments. Long-term and short-term storage of commercial goods and personal items is included. The wholesale, distribution, storage subcategories are:
- (A) Equipment and Materials Storage Yards — Uses related to outdoor storage of large equipment or products or large quantities of materials.
- (B) Moving and Storage Facilities — Uses engaged in the moving of household or office furniture, appliances, and equipment from one location to another, including the temporary storage of those same items.

- (C) Warehouse — Uses engaged in long-term and short-term storage of goods in bulk as well as storage by individuals in separate storage compartments.
 - (D) Wholesale Distribution — Uses engaged in the bulk storage and distribution of goods. Wholesale showrooms are also included.
- (10) Industrial Use Category
- This category includes uses that produce goods from extracted and raw materials or from recyclable or previously prepared materials, including the design, storage, and handling of these products and the materials from which they are produced. The industrial subcategories are:
- (A) Heavy Manufacturing — Uses that process or treat materials for the fabrication of large base-sector products. Assembly of large equipment and machines is included in this subcategory as well as manufacturing uses that typically produce noise, dust, or other pollutants capable of harming or annoying adjacent uses.
 - (B) Light Manufacturing — Uses that process, fabricate, assemble, treat, or package finished parts or products without the use of explosive or petroleum materials. (This subcategory does not include the assembly of large equipment and machinery.)
 - (C) Marine Industry — Uses that produce, distribute, and store commercial marine vessels and equipment.
 - (D) Research and Development — Uses engaged in scientific research and testing leading to the development of new products and processes.
 - (E) Trucking and Transportation Terminals — Uses engaged in the dispatching and long-term or short-term storage of large vehicles. Minor repair and maintenance of vehicles stored on the *premises* is also included.

(11) *Signs* Use Category

This category includes all *structures* that provide identification of businesses, products, services, or sites. The *sign* subcategory is: Allowable *Signs* — *Structures* that are placed on the ground, or on *building facades* or roofs, whose *sign copy* identifies a business, a *premises*, activities on a *premises*, or direction to a *premises*. See Section 142.1205.

- (b) Separately regulated uses are uses that may or may not meet the description of a use subcategory but are listed separately from any subcategory because in some or all zones they are regulated differently from other uses. Each use category contains a list of separately regulated uses, some of which may meet the description of a use subcategory within the same or another category. The use regulations identified for the separately regulated use shall supersede the use regulations for the use subcategory that may match the particular use.

(Amended 6-12-2001 by O-18948 N.S.; effective 12-12-2001.)
(Amended 4-23-2008 by O-19739 N.S.; effective 5-23-2008.)

§131.0120 **Applicable Overlay Zones in Base Zones**

In addition to the regulations of the base zones applied to property as described in this article, overlay zone regulations may also apply. Overlay zone regulations are located in Chapter 13, Article 2.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§131.0121 **Applicable Planned Districts Using Base Zones**

In addition to the regulations of the base zones applied to property as described in this article, planned district regulations may also apply. Applicable planned district regulations are located in Chapter 15, Article 2.

(Amended 10-2-2000 by O-18853 N.S.)

§131.0125 **Accessory Use Regulations for All Base Zones**

- (a) When the Use Regulations Table in any base zone identifies a use as a limited use or requiring a Neighborhood Use Permit or Conditional Use Permit, that use shall be subject to the same use regulations and use permit requirements whether or not the use is deemed a *primary use* or an *accessory use* on the *premises*.
- (b) A use that belongs in a subcategory where the subcategory is identified as not permitted in a particular base zone may be permitted as an *accessory use* in that zone, subject to all of the following requirements:

- (1) The use must meet the definition of an *accessory use*, as specified in Section 113.0103;
 - (2) The use must be consistent with any use and development regulations applicable to that use in any other base zone in the same type of zone (open space, agricultural, residential, commercial, or industrial);
 - (3) The *floor area* of a single *accessory use* shall not exceed 25 percent of the *gross floor area* of the *structures* on the *premises*;
 - (4) At least 51 percent of the *gross floor area* on the *premises* shall be occupied by a *primary use* or combination of multiple allowed uses;
 - (5) When a *premises* contains multiple tenants, the determination of *accessory use* shall be based on the *gross floor area* of the individual tenant.
- (c) A separately regulated use that is identified as not permitted in a particular zone is not permitted as an *accessory use* in that zone.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§131.0140 Use of Yards and Landscaped Areas in All Base Zones

The following regulations are related to other development regulations that are addressed in the Development Regulations Tables in each of the base zones and are applicable to all base zones. Except as specified by the applicable zone, *yards* and landscaped areas may be used only for the following items and purposes:

- (a) Living Landscape Material.
- (b) Incidental passage and use by occupants.
- (c) Landscape elements, constructed and installed to complement living landscape material, and not exceeding a height of 3 feet within front and street side yards.
- (d) *Fences* and walls as permitted in Chapter 14, Article 2, Division 3 (Fence Regulations).
- (e) Directional and other notification *signs* as permitted in Chapter 14, Article 2, Division 12 (Sign Regulations).

- (f) Walkways and paved driveways consistent with zone standards and applicable parking and landscape regulations.
- (g) Items that the City Manager may determine to be necessary to accommodate a temporary period of construction, site modification, or equipment change, when there is evidence of frequent and diligent physical effort to complete work.
- (h) Parking in accordance with Section 142.0510.
- (i) Storage of items when *screened* in accordance with Chapter 14, Article 2, Division 11 (Outdoor Storage and Display Regulations).

(Added 12-9-1997 by O-18451 N.S.; amended 10-18-1999 by O-18691 N.S.; effective 1-1-2000.)

§141.0612 Instructional Studios

Instructional studios are establishments in which skills including dance, art, and martial arts are taught to individuals or groups. Instructional studios do not include educational facilities.

Instructional studios may be permitted with a Conditional Use Permit decided in accordance with Process Three in the zones indicated with a "C" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

- (a) The number of students using the studio at any one time may be limited based on the following:
 - (1) The intensity of existing surrounding uses that are allowed in the zone; and
 - (2) The amount of parking available on the *premises*.
- (b) The hours of operation of the studio may be limited.
- (c) Within the Coastal Overlay Zone, instructional studios are not permitted on the ground floor in the CV-1-1 or CV-1-2 zone.

*(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)
(Amended 3-1-2006 by O-19467 N.S.; effective 8-10-2006.)*

§141.0613 Massage Establishments, Specialized Practice

Specialized practice massage establishments are permitted as a limited use in the zones indicated with an "L" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

- (a) Any *sign* advertising the establishment shall contain the full name of the operator and may contain words that identify the specialized field of practice in which the operator engages.
- (b) The letters of any words identifying the operator's specialized field of practice shall not exceed one-half of the height of the capital letters in the name of the operator, and the words shall be uniform in height.
- (c) The phrase "massage parlor" or "massage establishment" shall not be used on any *sign* or any other form of advertising. The word "massage" shall not be used on any *sign* or any other form of advertising unless preceded by words identifying the specialized field of practice.

